

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-973

May 11, 1999

COMMUNITY SERVICE TELEPHONE
COMPANY, Request for Exemption from
Required Approvals of Certain
Reorganizations Under 35-A M.R.S.A. § 708

ORDER GRANTING EXEMPTION

WELCH, Chairman; NUGENT & DIAMOND, Commissioners

On December 11, 1998, Community Service Telephone Company ("CST") filed a request for an exemption from the need to obtain approval, otherwise required by 35-A M.R.S.A. § 708(2), for certain reorganizations. Pursuant to 35-A M.R.S.A. § 708(2)(A), the Commission may grant exemptions from the approval requirement of Section 708. We grant the exemption subject to certain exceptions described below.

CST is a public utility subject to the jurisdiction of the Commission under Title 35-A, M.R.S.A. CST is an operating telephone utility, as defined by 35-A M.R.S.A. § 102(19), and is an incumbent local exchange carrier (ILEC). The Commission actively regulates its rates. CST is authorized to serve and does provide telephone service in the telephone exchanges of Greene, Leeds, Litchfield, Monmouth, Mt. Vernon, East Winthrop and Winthrop. CST is a wholly owned subsidiary of Community Service Communications, Inc. ("CSC"). CSC and companies in which CSC directly or indirectly owns ten percent (10%) or more of the stock are affiliated interests of CST as defined by 35-A M.R.S.A. § 707(1)(A).

CST has requested that the Commission grant it an exemption from the approval requirements of Section 708 of Title 35-A for certain transactions, described below, that would constitute a "reorganization" under Title 35-A. As represented in the Request, the requested exemption relates to activities of CSC and its affiliates.

CST claims that CSC and its affiliates have the opportunity and the right to invest in other activities and business ventures on an ongoing basis. However, because of Section 708, CST, as the regulated public utility¹, must obtain Commission approval if

¹One of CST's affiliates, Community Service Long Distance (CSLD), is also a public utility. However, the Commission does not actively regulate its rates. Accordingly, we have granted an exemption to CSLD from all approval requirements of Sections 707 and 708 both in the Order granting it authority to serve, in Docket No. 97-525, and in Chapter 280, §§ 12, applicable to all interexchange carriers. That general

CSC or its affiliates acquire a 10% or more interest in any other company or if they transfer, increase or decrease their ownership interest in a company in which they have a 10% or more ownership interest. CST claims that applying the full breadth of the statutory definition of "reorganization" to the investment, business and private activities of CSC and its affiliates may impose burdens, delays, public disclosure, uncertainties and possible lost business opportunities in many cases where the interests intended to be protected under Section 708 are not adversely affected.

CST argues that the interests of CST and its customers and investors, which Section 708 seeks to protect, can be reasonably protected without comprehensive application of Section 708 to all possible activities to which it might apply.

In *Community Service Telephone Company, Re: Petition for Approval of Reorganization*, Docket No. 86-40 (Dec. 15, 1987), we approved the creation of CSC and authorized CSC to invest up to \$2,250,000 in non-utility subsidiaries. Since the initial approval in Docket No. 86-40, there have been two recent occasions in which CST has been required to seek and obtain an increase in this limit in order to accommodate business activities of CSC. (Docket No. 96-776 and Docket No. 98-734).

In cases involving other ILEC telephone utilities, the Commission has granted exemptions from the Section 708 approval requirement, subject to certain major exceptions, for activities by persons or entities with ownership interests in the telephone utility that would constitute reorganizations by the public utility.² CST has requested that the Commission grant it a similar exemption with respect to activities by CSC and its affiliates. Specifically, CST requests a general exemption from the approval requirement for any "reorganization" except for:

exemption does not, of course, apply to CST, which is governed by this Order, for purposes of section 708 and by the statute itself for purposes of section 707.

² *Northland Telephone Company of Maine, Inc., Request for Exemption for Affiliated Interests of Northland Telephone Company of Maine, Inc. from Reorganization Statute, Section 708*, Docket No. 94-207, Order Approving Stipulation (June 21, 1994); *Mid-Maine Telecom, Inc., Request for Exemption or Affiliated Interests of Mid-Maine Telecom, Inc. from Reorganization Statute, Section 708*, Docket No. 94-206, Order Approving Stipulation (June 21, 1994), *UNITEL, INC., Request for Exemption from Required Approvals of Certain Reorganizations under 35-A M.R.S.A. § 708*, Docket No. 98-528, Order Granting Exemption (September 8, 1998).

- (a) a restructuring of CST;
- (b) a restructuring of an affiliated interest of CST, 10% or more of whose voting securities are owned, directly or indirectly, by CST
- (c) a restructuring resulting in the creation of an affiliated interest of CST where it is intended that the affiliate will (i) enter into a contract or arrangement to furnish goods to be used by CST or (ii) perform activities formerly or simultaneously performed by CST;
- (d) a restructuring of Community Service Communications, Inc. (CSC).

We have applied the first three exceptions to the other ILEC telephone utilities listed in footnote 2. CST has agreed to the fourth exception in response to Commission staff concerns about changes in the ownership or control of, or other effects upon, CST that might occur as a result of changes in the ownership or control of CST's parent company, CSC.

The term "restructuring" is not contained in 35-A M.R.S.A. § 708. We use the term in this Order, as we have in the prior orders cited above, to describe a range of activities that is narrower than those included in the statutory term "reorganization." As used in this Order, a "restructuring" means the creation, consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination, in whole or in part, of the public utility itself or a corporation or entity described in subparagraphs (b), (c) and (d), both above and in Ordering Paragraph 2, accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of more than ten percent (10%) of the utility's, corporation's or entity's voting securities. By contrast, the "reorganization" of a public utility includes "the creation, consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination, direct or indirect in whole or in part, of an *affiliated interest* as defined in section 707" (emphasis added).

CST has not requested an exemption under 35-A M.R.S.A. § 707, which requires Commission approval of any contracts or arrangements between a public utility and an affiliated interest of the public utility, and has stated that the requested exemption under Section 708 will not affect the applicability of Section 707.³

³ In separate filings, CST has recently requested approval of a Support Services Agreement between CST and its affiliate Community Service Long Distance (*Community Service Telephone Company, Request for Approval of Affiliated Interest Transaction and Reorganization Regarding Support Services Agreement with Community Service Long Distance*, Docket No. 97-974) and a generic Support Services Agreement between CST and other affiliates (*Community Service Telephone Company, Request for Approval of Standard (Support Services Agreement with Affiliated Interests*,

For the foregoing reasons, we find that CST's request for an exemption is reasonable, and we grant the request as provided in this Order.

Accordingly, we

O R D E R

1. Except as provided in Ordering Paragraph 2 below, the activities of Community Service Telephone Company and all entities which presently or in the future are affiliated interests (as defined in 35-A M.R.S.A. § 707) of Community Service Telephone Company shall be exempt from the requirements of 35-A M.R.S.A. § 708 (and similar successor statutes).

2. The following restructurings (as defined in the text of this order) shall remain subject to the Commission approval requirements of 35-A M.R.S.A. § 708(2):

- (a) a restructuring of Community Service Telephone Company;
- (b) a restructuring of an affiliated interest of Community Service Telephone Company, 10% or more of whose voting securities are owned, directly or indirectly, by Community Service Telephone Company;
- (c) restructuring resulting in the creation of an affiliated interest of Community Service Telephone Company where it is intended that the affiliate will (i) enter into a contract or arrangement to furnish services or goods to be used by Community Service Telephone Company or (ii) perform activities formerly or simultaneously performed by Community Service Telephone Company;
- (d) a restructuring of Community Service Communications, Inc.

3. The exemption created by Ordering Paragraph 1 shall be subject to prospective termination or limitation upon Commission order for violations of the terms

Docket No. 98-972). We approve those support service agreements in a separate order issued today.

or conditions of this Order or for other good cause after notice and hearing to Petitioners.

4. The limited exemption created by Ordering Paragraph 1 applies only to the requirement of 35-A M.R.S.A. § 708(2) that the Commission approve reorganizations. The exemption does not apply to the approval requirements of 35-A M.R.S.A. § 707(3) that requires Community Service Telephone Company to obtain Commission approval to extend or receive credit or to make or receive a loan to or from an affiliated interest or to make any contract or arrangement for the furnishing of management, supervision or construction, engineering, accounting, legal, financial or similar services, or to furnish any service or real or personal property other than those enumerated in 35-A M.R.S.A. § 707(3) with any affiliated interest; or to any other provision of Title 35-A. The Commission retains its powers under 35-A M.R.S.A. § 707(2) to inspect books, accounts and records of Community Service Telephone Company or of an affiliated interest that relates, directly or indirectly, to transactions between Community Service Telephone Company and an affiliated interest.

5. Community Service Telephone Company shall ensure that no restructurings undertaken by it, by Community Services Communications, Inc. or any of the subsidiaries of either Community Service Telephone Company or Community Service Communications, Inc. individually or in aggregate, shall materially impair the ability of Community Service Telephone Company to attract capital on reasonable terms.

6. As a condition of the granting of the exemption in Ordering Paragraph 1, Community Service Communications, Inc. and its affiliates shall not take any action pursuant to the exemption that materially impairs the ability of Community Service Telephone Company to attract capital on reasonable terms.

7. The removal of the limitation on investments in subsidiaries by Community Service Communications, Inc., as established in Docket No. 86-40 (as amended in Docket Nos. 96-776 and 98-734).

Dated at Augusta, Maine this 11th day of May, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: ☒ Yes ☐ No ☐ Absent Welch
 ☒ Yes ☐ No ☐ Absent Nugent
 ☒ Yes ☐ No ☐ Absent Diamond

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